

REMARKS

Reconsideration of the application is requested.

Claims 1-10 remain in the application. Claims 1-10 are subject to examination.

Claims 1 and 5 have been amended.

Under the heading "Claim Rejections – 35 USC § 101" on page 2 of the above-identified Office Action, claims 1-10 have been rejected under 35 U.S.C. § 101.

Claim 1 has been amended to specify that the steps relate to at least one transmission unit. The claims now clearly relate to a particular apparatus and are directed toward statutory subject matter. Support for the changes can be found by referring to the specification at page 3, last paragraph – page 6, first paragraph.

Under the heading "Claim Rejections – 35 USC § 103" on page 3 of the above-identified Office Action, claims 1-4 and 10 have been rejected as being obvious over U.S. Patent No. 5,715,277 to Goodson et al. under 35 U.S.C. § 103.

Claim 1 has been amended to better define the invention. Support for the changes can be found by referring to claim 5 and to the specification at page 3, last paragraph – page 5, first paragraph.

In new claim 1 it is now clearly stated that there are three separate processes of determining / measuring certain parameters. First, a table is filled with information about transmission methods as a function of different line parameters (“determining and storing at least one transmission method ... in a table for different line parameters of lines”). This first step is performed (once) during a test setup prior to the actual data transmission. Second, directly before each data transmission process a first measurement of the influence (of the background noise) of the respective transmission line is performed (“measuring ... interference of a line”). This second step is performed (always) before each transmission process. Third, after a first transmission method is determined based on the analysis of the measurement of the background noise of the line, the actual line parameters are measured by sending a test signal using said first transmission method (“measuring line parameters of a line”). The last step may be repeated using different transmission methods with respect to the table determined in the first step.

Subsequently the line parameters measured in step three are again compared to the line parameters stored in the table. Depending on this comparison a final transmission method is selected – namely the transmission method having the transmission speed with the best match between measured line parameters and stored line parameters (stored in the table).

Goodson et al. do not disclose three separate measurement processes and, in particular, Goodson et al. do not teach that a transmission method is selected

depending on a comparison between parameters determined during a test setup (first measurement) and current parameters measured before each actual data transmission (third measurement). Applicant respectfully disagrees with the Examiner's statement in the office action. Furthermore, Goodson et al. fail to disclose that the way of measuring the line parameters (third measurement) is dependent on an analysis made with respect to the results of a measurement of the influence of the transmission line (second measurement).

That means that in contrast to the disclosure of Goodson et al., the claimed invention involves the step of measuring the line parameters in a way that is directly dependent on the result of a first basic measurement of the background noise of the line. Since a method of using two subsequent measurements depending on and directly influencing each other cannot be derived from the teachings of Goodson et al., applicant believes that claim 1 is patentable over Goodson et al.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 1. Claim 1 is, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 1.

Finally, applicant appreciatively acknowledges the Examiner's statement that claims 1-5 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Some of the limitations of claim 5 have been added to claim 1.

In view of the foregoing, reconsideration and allowance of claims 1-10 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$130.00 in accordance with Section 1.17 is enclosed herewith.

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner Greenberg Sterner LLP, No. 12-1099.

Appl. No. 10/048,119
Reply to Office Action of December 8, 2008
Amdt. Dated April 8, 2009

Respectfully submitted,

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MPW:cgm

April 8, 2009

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